

REMARKS

I. Status of the Application

Claims 6-13 are pending in the application. Claims 1-5 and 11-15 were previously withdrawn as nonelected inventions. None of the claims have been cancelled.

In the Office Action, the Examiner rejected claims 6-13 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,802,237 to Pulido in view of U.S. Patent No. 6,480,660 to Reitmeier et al. Applicant respectfully traverses these rejections. In view of the Remarks herein, Applicant believes the present application is in condition for allowance and respectfully request notice of same.

Pulido

Pulido relates to an optical fiber organizer. The organizer includes a housing having a first level separated from a second level, a first fiber port on the first level, a second fiber port on the second level, and a plurality of nested, substantially circular fiber channels formed on the first level, each channel having a passage for communicating fiber with an adjacent channel, an outermost one of the channels including a passage for communicating fiber with the first fiber port on the first level, and an innermost one of the channels includes a passage for communicating fiber to the second fiber port on the second level (col. 3, lines 25-36). A hinge device is provided on the housing (col. 2, line 66).

Reitmeier

Reitmeier relates to a fiber optic cabinet and fiber optic tray. The cabinet includes a plurality of cabinet guides positioned within the interior of the cabinet (col. 2, lines 36-42). The splice tray is received within the interior of the cabinet and slidably engages the rails of the cabinet guides (col. 2, lines 63-65, FIGS 1 and 2).

Rejections

In the Office Action, the Examiner rejected claims 6-13 under 35 U.S.C. §103(a) as being unpatentable over Pulido in view of Reitmeier. The Examiner states that “[w]hile Pulido does not expressly teach that the receptacles (12) are included in a cable junction box . . . it would have been obvious to one of ordinary skill in the art at the time of the invention to place receptacles of

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Pulido in a junction box as placement of fiber storage devices are notoriously well known to be placed in such boxes, as evidenced by Reitmeier ” (Office Action, p. 3). Applicant respectfully submits that the combination of references is not suggested; however, even if the combination is proper, Applicant submits his invention is patentable over the combination of references.

Such reasoning given above by the Examiner for combining the prior art references does not meet the standard set forth by the Supreme Court in *KSR v. Teleflex*. In *KSR*, the Supreme Court stated that a rejection of a patent claim on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support a legal conclusion of obviousness. *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-41 (2007). Contrary to the requirements of *KSR*, the Examiner has merely put forth conclusory statements for the combination. The Examiner has not provided specific reasoning to support the alleged combinations listed above, and thus has failed to present a *prima facie* case of obviousness.

Pulido states “an optical fiber organizer is generally designated 10 . . .” (col. 2, lines 37-38). Contrary to the statement in the Office Action that Pulido “teaches a housing for a cable junction box (e.g. 10),” Pulido does not teach or suggest a separate defined space within a container to hold a cable junction box separate from the optical fibers. Pulido is a one compartment unit. In contrast, the present invention is directed to a housing for two separate components, namely a cable junction box and a cable loop. The housing includes at least two separate compartments for retaining the junction box separately from the cable loop. These features are recited in amended claim 1. The housing of the present invention permits easy access to both components, as well as, easily permitting the removal of one of the components without affecting the installation of the remaining component. Additionally, both compartments are separately removable from the housing.

It is noted in the Office Action that Pulido does not teach that the receptacles or compartments, are included in a cable junction box. Reitmeier is allegedly added for the teaching that “it would have been obvious to one of ordinary skill in the art at the time of the invention to place the receptacles of Pulido in a junction box as placement of fiber storage devices are notoriously well known to be placed in such boxes as evidenced by Reitmeier et al.”

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(Office Action, p. 3). However, this conclusion is in disregard to the structural features of the present invention. Specifically, the present invention is directed to a housing in which a junction box is placed within the folding compartments, such that the two compartments open to provide easy, open-topped access to the junction box and cable, which are kept in two separate components. Reitmeier relates to a fiber optic cabinet and fiber tray. However, combining the teaching of Pulido (a optical fiber organizer) with the teaching of Reitmeier does not result in the housing structure of the present invention. Neither reference, alone or in combination teaches a housing for retaining both a junction box and a cable loop in two separate compartment, as in the present invention.

Moreover, Applicant respectfully submits that the Examiner could only have arrived at a conclusion of obviousness through hindsight analysis by reading Applicant's own inventive teaching and by selecting those elements from Pulido and Reitmeier that are deemed relevant to the teachings of the present invention. Such decomposition of an invention "into its constituent elements, finding each element in the prior art, and then claiming that it is easy to reassemble these elements into the invention, is a forbidden *ex post* analysis." *In re Mahurkar Patent Litigation*, 831 F.Supp. 1354, 1374, 28 U.S.P.Q. 2d 1801, 1817 (N.D. Ill. 1993). The Federal Circuit has specifically noted:

[I]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious . . . [o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fritch, 972 F.2d 1260, 1266, 23 U.S.P.Q. 2d 1780, 1784 (Fed. Cir. 1992).

Unless the references suggest the particular combination of elements themselves, they cannot show the actual invention was obvious. *In re Mahurkar Patent Litigation*, 831 F.Supp. 1354, 1374, 28 U.S.P.Q. 2d 1801, 1817 (N.D. Ill. 1993). In other words, it is impermissible for the Examiner to select certain elements of one reference and ignore the structural teachings of the other reference. Reitmeier teaches a cabinet with a interior designed to receive a fiber tray. Pulido teaches an optical fiber organizer for storing optical fibers, but does not teach that its device is suitable for separate installation of a cable junction box. Inserting the device of Pulido

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into the cabinet of Reitmeier, as suggested in the Office Action to arrive at the present invention, ignores the structural features of the separate compartments of the present invention, which are uniquely designed to hold a junction box separate from a cable loop. Furthermore, the cabinet of Reitmeier does not open like a book, as does the housing of the present invention to expose the interior of the multiple components. Thus, the design of the cabinet of Reitmeier would not make it suitable for surface inlay installation of cables, as described in the present invention (see page. 3, lines 13-18 which discusses the advantages of opening the housing to permit access and installation of the cable without severing the cable). It is clear the Examiner has taken the "choice" features of the Pulido and Reitmeier in an attempt to combine them to arrive at the present invention.

In view of the forgoing, Applicant submits that it is error to combine the cited references to render the claimed invention obvious. Furthermore, to use the present application as a reason to combine the references is an improper hindsight analysis expressly prohibited by the Federal Circuit. *In re Fine*, 837 F.2d at 1075, 5 U.S.P.Q. at 1600. Applicant therefore submits that, because no *prima facie* case of obviousness has been established, the invention of claims 6 through 13 are not obvious in view of the cited references.

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CONCLUSION

In light of the foregoing reasons, Applicant respectfully requests reconsideration and allowance of claims 6-13. The Commissioner is authorized to charge any additional fees or credit any overpayments associated with this Amendment to Deposit Account 13-0206. Applicant further invites the Examiner to contact the undersigned representative at the telephone number below to discuss any matters pertaining to the present Application.

Respectfully submitted,

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I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service, with first class postage prepaid, in an envelope addressed to: Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 23, 2009.

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